

§ 720.3

15 CFR Ch. VII (1–1–10 Edition)

and provide that the person may request a hearing before the Administrative Law Judge within 30 days from the date of the notification letter.

(b) *Waiver.* The failure of the notified person to file a request for a hearing within the time provided constitutes a waiver of the person's right to contest the denial of export privileges that BIS intends to impose.

(c) *Order of Assistant Secretary.* If no hearing is requested, the Assistant Secretary for Export Enforcement will order that export privileges be denied as indicated in the notification letter.

[71 FR 24929, Apr. 27, 2006, as amended at 73 FR 78183, Dec. 22, 2008]

§ 720.3 Final decision on administrative action denying export privileges.

(a) *Hearing.* Any hearing that is granted by the ALJ shall be conducted in accordance with the procedures set forth in § 719.14 of the CWC.R.

(b) *Initial decision and order.* After considering the entire record in the proceeding, the ALJ will issue an initial decision and order, based on a preponderance of the evidence. The ALJ may consider factors such as the seriousness of the criminal offense that is the basis for conviction, the nature and duration of the criminal sanctions imposed, and whether the person has undertaken any corrective measures. The ALJ may dismiss the proceeding if the evidence is insufficient to sustain a denial of export privileges, or may issue an order imposing a denial of export privileges for the length of time the ALJ deems appropriate. An order denying export privileges may be standard or non-standard, as provided in Supplement No. 1 to part 764 of the Export Administration Regulations (15 CFR parts 730 through 774). The initial decision and order will be served on each party, and will be published in the FEDERAL REGISTER as the final decision of BIS 30 days after service, unless an appeal is filed in accordance with paragraph (c) of this section.

(c) *Grounds for appeal.* (1) A party may, within 30 days of the ALJ's initial decision and order, petition the Under Secretary, Bureau of Industry and Security, for review of the initial decision and order. A petition for re-

view must be filed with the Office of Under Secretary, Bureau of Industry and Security, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, and shall be served on the Office of Chief Counsel for Industry and Security or on the respondent. Petitions for review may be filed only on one or more of the following grounds:

(i) That a necessary finding of fact is omitted, erroneous or unsupported by substantial evidence of record;

(ii) That a necessary legal conclusion or finding is contrary to law;

(iii) That prejudicial procedural error occurred; or

(iv) That the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion.

(2) The appeal must specify the grounds on which the appeal is based and the provisions of the order from which the appeal was taken.

(d) *Appeal procedure.* The Under Secretary, Bureau of Industry and Security, normally will not hold hearings or entertain oral arguments on appeals. A full written statement in support of the appeal must be filed with the appeal and be simultaneously served on all parties, who shall have 30 days from service to file a reply. At his/her discretion, the Under Secretary may accept new submissions, but will not ordinarily accept those submissions filed more than 30 days after the filing of the reply to the appellant's first submission.

(e) *Decisions.* The Under Secretary's decision will be in writing and will be accompanied by an order signed by the Under Secretary, Bureau of Industry and Security, giving effect to the decision. The order may either dispose of the case by affirming, modifying or reversing the order of the ALJ, or may refer the case back to the ALJ for further proceedings. Any order that imposes a denial of export privileges will be published in the FEDERAL REGISTER.

[71 FR 24929, Apr. 27, 2006, as amended at 73 FR 78183, Dec. 22, 2008]

§ 720.4 Effect of denial.

Any person denied export privileges pursuant to this part shall be considered a “person denied export privileges” for purposes of the Export Administration Regulations (EAR) (15 CFR parts 730 through 774). Orders denying export privileges pursuant to Parts 764 and 766 of the EAR are published in the FEDERAL REGISTER when they are issued and are legally controlling documents in accordance with their terms. BIS maintains unofficial compilations of persons denied export privileges on its Web site.

[71 FR 24929, Apr. 27, 2006, as amended at 73 FR 78183, Dec. 22, 2008]

PART 721—INSPECTION OF RECORDS AND RECORDKEEPING

Sec.

721.1 Inspection of records.

721.2 Recordkeeping.

721.3 Destruction or disposal of records.

AUTHORITY: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

SOURCE: 71 FR 24929, Apr. 27, 2006, unless otherwise noted.

§ 721.1 Inspection of records.

Upon request by BIS or any other agency of competent jurisdiction, you must permit access to and copying of any record relating to compliance with the requirements of the CWCR. This requires that you make available the equipment and, if necessary, knowledgeable personnel for locating, reading, and reproducing any record.

§ 721.2 Recordkeeping.

(a) *Requirements.* Each person, facility, plant site or trading company required to submit a declaration, report, or advance notification under parts 712 through 715 of the CWCR must retain all supporting materials and documentation used by a unit, plant, facility, plant site or trading company to prepare such declaration, report, or advance notification to determine production, processing, consumption, export or import of chemicals. Each facility subject to inspection under Part 716 of the CWCR must retain all supporting materials and documentation associated with the movement into,

around, and from the facility of declared chemicals and their feedstock or any product chemicals formed from such chemicals and feedstock. In the event that a declared facility is sold, the previous owner of the facility must retain all such supporting materials and documentation that were not transferred to the current owner of the facility (e.g., as part of the contract involving the sale of the facility)—otherwise, the current owner of the facility is responsible for retaining such supporting materials and documentation. Whenever the previous owner of a declared facility retains such supporting materials and documentation, the owner must inform BIS of any subsequent change in address or other contact information, so that BIS will be able to contact the previous owner of the facility, to arrange for access to such records, if BIS deems them relevant to inspection activities involving the facility (see § 716.4 of the CWCR).

(b) *Five year retention period.* All supporting materials and documentation required to be kept under paragraph (a) of this section must be retained for five years from the due date of the applicable declaration, report, or advance notification, or for five years from the date of submission of the applicable declaration, report or advance notification, whichever is later. Due dates for declarations, reports and advance notifications are provided in parts 712 through 715 of the CWCR.

(c) *Location of records.* If a facility is subject to inspection under part 716 of the CWCR, records retained under this section must be maintained at the facility or must be accessible electronically at the facility for purposes of inspection of the facility by Inspection Teams. If a facility is not subject to inspection under part 716 of the CWCR, records retained under this section may be maintained either at the facility subject to a declaration, report, or advance notification requirement, or at a remote location, but all records must be accessible to any authorized agent, official or employee of the U.S. Government under § 721.1 of the CWCR.

(d) *Reproduction of original records.* (1) You may maintain reproductions instead of the original records provided